

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTOPHER HOWE, :
Individually, and on :
Behalf of all others :
Similarly situated, :
 Plaintiff :
 -vs- : CASE NO. 1:19-cv-01374
SPEEDWAY LLC AND :
MARATHON PETROLEUM :
COMPANY, :
 Defendants :

Deposition of MATT GREEN, a witness
herein, taken by the Plaintiff as upon
cross-examination and pursuant to the Ohio Rules of
Civil Procedure as to the time and place and
stipulations hereinafter set forth, at the offices
of Britton & Associates, 201 Riverside Drive, Suite
2B, Dayton, Ohio at 11:39 a.m., on January 17,
2020, before Jamie S. Hurley, Court Reporter and
Notary Public within and for the State of Ohio.

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1 WHEREUPON:

2 MATT GREEN,
3 of lawful age, a witness herein, being first duly
4 sworn as hereinafter certified, testified as
5 follows:

6 CROSS-EXAMINATION

7 BY MR. STEPHAN:

8 Q. Good morning, Matt. Can you please
9 state and spell your name for the record?

10 A. Yeah. It's Matt Green. Did you say
11 spell, too, or --

12 Q. If you could spell your last name,
13 please.

14 A. Sure. It's, G-R-E-E-N.

15 Q. Is it okay if I call you Matt today?

16 A. That's fine.

17 Q. Okay. Have you ever been deposed
18 before?

19 A. I have.

20 Q. How many times?

21 A. Two or three. I want to say three.

22 Q. Okay. When was the last time you were
23 deposed?

24 A. Oh, it's been a few years, probably
25 five or six.

1 clear record of my question and your answer, okay?

2 A. Okay.

3 Q. The second and you're already doing a
4 good job is please give verbal responses. The
5 court reporter cannot take down nonverbal responses
6 like head nods, okay?

7 A. Okay.

8 Q. The third is that I'm not trying to
9 trick or confuse you today so if I ask you a
10 question that you do not understand just ask me to
11 rephrase and I'll try to make it clear, okay?

12 A. All right.

13 Q. And the last instruction I have is you
14 are free to take a break today at any time as long
15 as a question is not pending, okay?

16 A. Okay.

17 Q. Matt, can you tell us who you currently
18 work for?

19 A. I work for Speedway.

20 Q. Okay. And you've worked for Speedway
21 for more than 20 years; is that right?

22 A. That's correct.

23 Q. When did you start?

24 A. June of '99.

25 Q. Okay. And currently where do you work,

1 Q. That would --

2 A. The SAP system or what specifically?

3 Q. Sure. What is managing the business
4 side of Speedway SAP HR environment entail?

5 A. That basically just ensures that we are
6 getting the employee information updated from the
7 field so new hires, promotions, separations, and
8 then the weekly payroll processing that we do, just
9 making sure that all works together and we're
10 taking care of the business.

11 Q. Okay. And did you coordinate that
12 effort with Marathon?

13 A. No. That's our responsibility at
14 Speedway.

15 Q. Okay. Can you tell us what your
16 current position is?

17 A. I'm the director of human resources
18 services.

19 Q. And how long have you been in that
20 position?

21 A. Since 2011, I think, yeah, 2011.

22 Q. Okay. So from 2011 to the present
23 you've been the director of human resource
24 services?

25 A. Well, the position actually changed. I

1 A. Yes.

2 Q. And then it's your understanding that
3 TimeLink was then purchased or bought out at some
4 point by Kronos; is that correct?

5 A. That's correct.

6 Q. Do you know when Speedway first started
7 using TimeLink?

8 A. It goes back to, I want to say 2005,
9 2006, somewhere in there.

10 Q. Okay. And do you know approximately
11 when Kronos purchased TimeLink?

12 A. No, I don't know specifically. I would
13 say it was much later but, or more recent I guess,
14 but I don't know specifically.

15 Q. Do you know the year?

16 A. No. I've even trying to think of the
17 year here. No, I'd be guessing if I said
18 something. I don't know.

19 Q. Do you know if it's been within the
20 past five years?

21 A. Maybe, sounds right.

22 Q. If you wanted to find out, could you?

23 A. I'd probably have to do some inquiry.

24 Q. And how would you do that?

25 A. We still, well, no, we don't. They

1 communicated with Kostas?

2 A. It's been years.

3 Q. Has it been more than two years?

4 A. Yeah, I believe so. That sounds right.

5 Q. It's been more than three years?

6 A. I would venture to say three. I think
7 it's been more like four or five but I can't be
8 specific.

9 Q. Okay. The last time you spoke with
10 Kostas was he the employee of Kronos?

11 A. Yes. He would have been an employee of
12 Kronos.

13 Q. Do you know where he physically works?

14 A. I do not. The original TimeLink group
15 was out of New York, I believe, but I don't know
16 once he went to Kronos where he would have been.

17 Q. Okay. Going back to TimeLink I think
18 you mentioned that Speedway used them as early as
19 2005 or 2006?

20 A. Correct.

21 Q. Okay. What services did TimeLink
22 provide to Speedway?

23 A. TimeLink basically provided us with a
24 time and attendance solution as well as some time
25 clocks for our stores.

1 Q. Were they provided, they provided
2 hardware, the clocks themselves and then also a
3 software solution?

4 A. Correct.

5 Q. Did they provide any other services?

6 A. No. That would have been it.

7 Q. Okay. The clocks that they produced,
8 were those used in Speedway stores?

9 A. Yes. They were used in, yeah, our
10 legacy Speedway stores, yeah.

11 Q. Okay. Do you know approximately how
12 many clocks TimeLink produced?

13 A. TimeLink would have been before the
14 Hess acquisitions so 1,500, give or take.

15 Q. Okay. And do you know when TimeLink
16 provided those 1,500 or so clocks?

17 A. That would have been on the original
18 implementation and, again, I'm guessing about 2005
19 or 2006.

20 Q. Okay. Is there a record anywhere at
21 Speedway showing when those clocks were purchased?

22 A. Not that I'm aware of.

23 Q. There should be a purchase record,
24 correct?

25 A. There could be. I'm not in purchasing

1 them.

2 Q. Do you know how those clocks
3 functioned?

4 A. A little bit because of the discussion
5 when we initially bought them.

6 Q. Okay. Were those clocks sent out to
7 stores, Speedway stores in Illinois also?

8 A. Yes. Illinois would have been one of
9 our states at the time, yes.

10 Q. Okay. And approximately how many
11 stores would there have been in Illinois back in
12 2005 or so?

13 A. That's a great question. 100 would be
14 my guess.

15 Q. Okay. And those TimeLink time clocks
16 that were sent to Illinois stores, were they used
17 by store employees?

18 A. Yes.

19 Q. Okay. Did all of the hourly paid store
20 employees have to use those types of clocks to
21 record their time?

22 A. All the employees at the store level
23 would clock in and out with the clocks.

24 Q. Okay. So customer service would have
25 to clock in and out?

1 A. No. On all the store level employees
2 so that would be our general managers, the
3 assistants and the hourly CSRs.

4 Q. Okay. What does CSR stand for?

5 A. Customer service representative.

6 Q. Okay. That's what I was asking.

7 A. Okay. Okay.

8 Q. Okay. So all of the store employees in
9 Illinois would have to record their time using
10 these TimeLink time clocks between 2005 and 2015 or
11 so; does that sound about right?

12 A. Yep. Correct.

13 Q. Okay. And do you know how many
14 employees in Illinois use those time clocks between
15 that time?

16 A. No. That, I have no idea.

17 Q. Okay. We can find that out by looking
18 at the HRIS, correct?

19 A. Yes. We could probably run a report
20 and determine how many employees were at a store.

21 Q. Okay. And we could find out all of the
22 employees that were in Illinois, for example,
23 between that time?

24 A. Yes.

25 Q. Okay. So sticking with this TimeLink

1 clock, before employees, store employees could use
2 it, would they have to be enrolled?

3 A. They did have to be enrolled, correct.

4 Q. And are you familiar with that process?

5 A. I'm vaguely trying to recall it, yes.

6 I am familiar with it.

7 Q. Okay. Can you tell us how they would
8 be enrolled?

9 A. So from what I recall the manager had
10 to go up to the clock, scan their finger. I
11 believe there was a code they put in. I don't know
12 that that code was and then or maybe it was a
13 button that said enroll employee. I can't recall.
14 And then the employee had to put their finger up
15 there and scan it three times.

16 Q. Okay. And when you say scan their
17 finger, what part of their finger would they have
18 to scan?

19 A. We told them their index finger but we
20 had, we had employees, like, that were formally
21 cooks and stuff where they couldn't read it, so
22 they could use the side of their finger, the side
23 of their knuckle, I mean, anything like that would
24 actually work.

25 Q. So when you say they could use their

1 sorry, there was a step in there somewhere that the
2 manager had to put their employee number in, too.
3 So I think they did that and then they scanned the
4 finger three times.

5 Q. Okay. Was there also a step to confirm
6 that the image had been properly recorded?

7 A. I think that happened after the third
8 scan. It might have turned green or something.
9 It's been a while but there had to have been
10 something that, that maybe it beeped. There was
11 something to let them know that they were good.

12 Q. Okay. Back during this time when the
13 TimeLink clocks were used between 2005 and 2015 or
14 so, well, first thing, did you ever see them
15 referred to as biometric clocks or biometric time
16 clocks?

17 A. Yes, biometric, yep.

18 Q. Okay. And back during this time did
19 Speedway obtain written consents from its employees
20 in Illinois before they were enrolled in those
21 TimeLink time clocks?

22 A. Written consent, no.

23 Q. Back during that time between 2005 and
24 2015 did Speedway have any sort of publicly
25 available policy regarding the use of those

1 employees fingerprints on the time clock?

2 A. No.

3 Q. The TimeLink time clocks, where in the
4 store would they be located?

5 A. I believe it varied depending on space
6 and having to connect into the store network to
7 make it all work but typically they were somewhere
8 close to probably the front registers as you go
9 into the back room so somewhere right in there.

10 Q. Okay.

11 A. But it did vary.

12 Q. And you mentioned that they were
13 networks, correct?

14 A. Yeah. Somehow the clocks had to
15 communicate to the software.

16 Q. Okay. And where was the software
17 located?

18 A. The software was somewhere on our
19 network because the manager had to get to it on
20 their back office computer.

21 Q. Okay. You're talking about the
22 Speedway network?

23 A. The Speedway store network, correct.

24 Q. Okay. And that would be on servers in
25 Enon, Ohio; is that correct?

1 Q. Okay. And do you know how those, how
2 that enrollment, how that enrollment worked?

3 A. I can't speak to those clocks. That's
4 a little bit beyond my time.

5 Q. Do you know who at Speedway made the
6 decision to use the finger scan technology?

7 A. Originally with TimeLink?

8 Q. Sure.

9 A. So, yes. There was a team of
10 Speedway's IT, HR, and operations group. I
11 represented HR.

12 Q. Okay. And who represented IT?

13 A. IT would have been Terry Hamilton at
14 the time.

15 Q. And who would have been operations?

16 A. Bud Labillois.

17 Q. Could you spell his last name for us,
18 please?

19 A. Yeah, I'd like to. I'm going to guess
20 here, L-A-B-I-L-L-O-I-S.

21 Q. Okay. So do you remember what was
22 involved in that process?

23 A. Yeah. So we did a whole time and
24 attendance RFP. It seems to me, yeah. Yeah. So
25 it would have been RFP to start the process.

1 would be in purchasing.

2 Q. Did you attend any meetings as part of
3 that project?

4 A. Yes.

5 Q. Where would those meetings be held?

6 A. Those were all in Enon.

7 Q. Okay. Was legal involved at all in
8 that project?

9 A. Legal would have been brought, involved
10 when we went through the contract.

11 Q. The contract with TimeLink?

12 A. Correct.

13 Q. At that point was the decision to use
14 finger scan technology already made?

15 A. Yes.

16 Q. Okay. And you were part of the group
17 that made that decision, correct?

18 A. We made the recommendation. Ultimately
19 it would have been the vice president of operations
20 in HR to make the final decision but we made the
21 recommendation. That is correct.

22 Q. Okay. And who would that have been
23 that would have made the final decision on that?

24 A. Rich Rowe was our VP of HR at the time.
25 He's retired. And who had operations? That's not

1 Glenn. That would have been, I'm drawing a blank.

2 I can find out but --

3 Q. Okay. And was there a reason why
4 Speedway decided to use the finger scan technology?

5 A. I think when we looked at the total
6 time and attendance the decision was made to try to
7 take some of the burden off our store managers of
8 having to input that time manually every week.

9 Q. Okay. Any other reasons?

10 A. Moving to the 21st century.

11 Q. Any other reasons?

12 A. No. Efficiency was the main driver.

13 Q. Okay. The recommendation that you
14 made, your group made, were those in writing?

15 A. We may have put together a PowerPoint
16 to talk to the management but that would have been
17 about it.

18 Q. Do you know if one of the benefits of
19 using the finger scan technology was to avoid buddy
20 punching where one employee could punch in for
21 another?

22 A. That's a fair statement. That did come
23 up in the RFP discussion.

24 Q. Okay. And that's because by using the
25 finger scan process, that would identify each

1 employee, that would help identify each employee?

2 A. Yeah. I guess you could say that where
3 if you had a card or something like that, then that
4 could be borrowed, right?

5 Q. Right. Okay. So going back to the
6 Kronos clocks are those still being used, by the
7 way?

8 A. No. They would have been pulled out
9 when the TimeLink clocks were pulled out.

10 Q. Okay. Sometime in 2018?

11 A. Yes. When we put the Infor clocks in,
12 yep.

13 Q. When the Kronos clocks were rolled out
14 and when Speedway employees were enrolled did
15 Speedway require written consent before they were
16 enrolled?

17 A. We did not require written consent, no.

18 Q. Okay. The third type of clock is the
19 Infor time clock; is that correct?

20 A. That's the one we have now, correct.

21 Q. Okay. And do you know who the
22 manufacturer of that clock is?

23 A. I do not.

24 Q. Do you know what the name of it is?

25 A. I do not. I couldn't tell you if we

1 had the Infor logo on that one or not.

2 Q. Does it also utilize finger scan
3 technology?

4 A. Yes, it does.

5 Q. Okay. And have they, are those clocks
6 being used in Illinois stores?

7 A. They should be, yes. That is correct.

8 Q. And do employees have to enroll in
9 those clocks to be able to use them?

10 A. There is an enrollment feature, yes.

11 Q. And do you know how that process works?

12 A. I do not on the new ones, no.

13 Q. Do you know if employees have to
14 provide a scan of their finger to become enrolled?

15 A. Yes. They would have to do that.

16 Q. Okay. Has Speedway obtained written
17 consent from its employees before they were
18 enrolled in the Infor time clocks?

19 A. Yes. They provide written consent
20 today.

21 Q. Okay. When did Speedway first require
22 written consent to use its time clocks?

23 A. It's been a year or two, somewhere in
24 the mix there.

25 Q. Okay. Were you involved in that

1 Let's say five minutes.

2 MR. STEPHAN: Yeah. That sounds
3 good.

4 MR. WOLFE: All right.

5 (WHEREUPON, a recess was taken.)

6 BY MR. STEPHAN:

7 Q. Matt, can you think of any reason why
8 Speedway did not require written consent for its
9 Illinois employees before they were enrolled in the
10 time clocks before doing so in 2018?

11 A. Yeah. I don't know.

12 Q. Okay.

13 (WHEREUPON, Plaintiff's Exhibit
14 No. 1 was marked for identification.)

15 BY MR. STEPHAN:

16 Q. Matt, have you seen this document
17 before?

18 A. Intracompany Correspondence, not
19 recalling it, no.

20 Q. Okay. Do you know any of the people
21 that are listed under the to heading?

22 A. Under the to, yes.

23 Q. Who do you know?

24 A. Don Wehrly, D.W. Wehrly.

25 Q. Okay.

1 10:27 a.m.; do you see that?

2 A. I see that.

3 Q. David Baugh, is he the same person
4 mentioned earlier in head of legal?

5 A. Yes.

6 Q. Was he still head of legal back in
7 August of 2017?

8 A. Yes. He would have been.

9 Q. [REDACTED]

10 [REDACTED]

11 A. [REDACTED]

12 [REDACTED] [REDACTED]

13 Q. Okay. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 A. He did.

17 Q. And also Phil Hall?

18 A. Yes. Phil Hall, and to Ms.
19 Hollandsworth and Phil Hall.

20 Q. Who is that?

21 A. Phil Hall is my boss.

22 Q. Okay. And what's his position?

23 A. He is the senior vice president of HR
24 in training at Speedway.

25 Q. And how long have you reported to him?

1 A. Phil came to Speedway in 2015.

2 Q. Okay. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 A. I do see that.

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 A. I've lost you here. So on 7440?

13 Q. That's right.

14 A. And where?

15 Q. The first full paragraph at the top.

16 Maybe it's the second.

17 A. It looks like the second. I see it,
18 it's in the second.

19 Q. [REDACTED]

20 [REDACTED]

21 A. No, I had not.

22 Q. Okay. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 A. Robin Opp, his current position is

1 A. I don't recall seeing this, no.

2 Q. Did you play any role in preparing any
3 sort of consent?

4 A. No. No.

5 Q. By looking at this document can you
6 tell who would have been involved in this process?

7 A. By looking at the document, no, I
8 can't.

9 Q. Okay. Do you know if these consent
10 forms were rolled out to Illinois stores around
11 November of 2017?

12 A. Yeah. It references a November 2nd and
13 November 1st, 2017 date on here.

14 Q. Right. And my question was do you know
15 if that actually happened?

16 A. Oh, I don't know specifically.

17 Q. If you wanted to find out, who would
18 you ask?

19 A. If this actually went out on what date,
20 is that your question?

21 Q. That's right.

22 A. I would go to our communications group
23 and see if they had a record of it.

24 Q. Can you remind me again who that would
25 be?

1 regardless of whether it was a TimeLink clock, a
2 Kronos, or an Infor clock, correct?

3 A. So that's true of the TimeLink clock
4 and I think I stated earlier I'm not 100 percent
5 sure on the Kronos or the Infor.

6 Q. Okay. But you would agree that they
7 generally went through the same enrollment process?

8 A. I would say it was a similar enrollment
9 process without knowing specifically how that
10 process worked, yes.

11 Q. Okay. Would you agree that they are
12 subject to the same policies regarding those time
13 clocks?

14 A. Policies, what do you mean by that?

15 Q. Any policies, time and attendance
16 policies --

17 A. Like clocking in, clocking out, breaks,
18 all that good stuff?

19 Q. That's right.

20 A. Yes. Yes, I would agree with that.

21 Q. And you disagree that prior to November
22 of 2017 Speedway did not obtain written consents
23 from them before they were enrolled?

24 A. I do not believe they obtained written
25 or provided written consent; that is correct.

1 Q. Okay. And you'd also agree that prior
2 to that date November of 2017 they weren't informed
3 of a publicly available BIPA policy?

4 A. I don't know that specifically.

5 Q. Okay. Are you aware of a publicly
6 available BIPA policy existing before November of
7 2017?

8 A. No, I do not believe so.

9 MR. STEPHAN: That's all the
10 questions I have. Thank you.

11 THE WITNESS: Okay. Thanks.

12 MR. STEPHAN: I appreciate it.
13 Yep.

14 THE WITNESS: All right.

15 MR. WOLFE: We don't have
16 anything. See you, Ryan.

17 MR. STEPHAN: Thanks, Matt.

18 (WHEREUPON, deposition concluded
19 at 1:52 p.m.)

20 * * * * *

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22
23 _____
MATT GREEN
24
25